

REMARKS/ARGUMENTS

Claim 52 is amended to obviate a minor typographical informality.

In response to the Election of Species Requirement, Applicants elect the sub-species 3a and the sub-species 3b, with traverse.

Applicants have reviewed the present claims. Currently, claims 1, 8, 13-15, 37-39 and 51-67 are under consideration, with other claims having being previously withdrawn in response to a previous restriction requirement. Each of the claims which has not been previously withdrawn is either generic or readable upon the elected species.

The requirement is traversed on several grounds. First, the Office Action asserts, as is required for an Election of Species Requirement, that the species are mutually exclusive characteristics. Although Applicants appreciate the additional acknowledgement that the different features are not obvious (last sentence of page 2), Applicants respectfully disagree with the assertion that the species are mutually exclusive, and therefore, the requirement to elect from among the species is erroneous.

By way of example, the Office Action asserts that the Species 1b, 2b, and 3b are mutually exclusive species. However, 1b relates to increasing the flow of oxygen-off gas, and 2b relates to the use of a compressor for the oxygen-off gas. However, the use of a compressor is a way to increase the flow of oxygen-off gas, and therefore, the assertion that these species are mutually exclusive is erroneous. Moreover, the Office Action asserts that Species 3b, relating to feeding of hydrogen-off gas and oxygen-off gas to the mixing portion is mutually exclusive to Species 1b and 2b, however, this assertion is also erroneous, because an increased flow of oxygen can be provided, for example, with a compressor, and this increased oxygen flow can also be fed to the mixing portion together with feeding of hydrogen-off gas being fed to the mixing portion. By way of example, and not to be

construed as limiting, as set forth in the first full sentence of the paragraph bridging pages 22 and 23 of the present specification, it is described that hydrogen-off gas is mixed with oxygen-off gas in the mixing portion, and moreover, this is in conjunction with increasing the flow rate of the oxygen-off gas “as described above ...” Further, in the preceding discussion in the specification (i.e., “described above” in the specification) the increased flow of oxygen-off gas is provided by driving the compressor. See, e.g., pages 21-22, and particularly the first sentence of the second full paragraph of page 21. Accordingly, the assertion that Species 1b-3b are mutually exclusive is erroneous.

The Office Action also asserts that the Species 1a-5a are mutually exclusive, however, this assertion is also erroneous. For example, the opening or closing of a valve (Species 1a) in accordance with an elapsed time is not mutually exclusive with respect to the amount of time that the valve is open. By way of example again, and not to be construed as limiting, as set forth in the paragraph bridging pages 19 and 20, on the basis of an elapsed time it can be determined that the concentration of impurities in circulating hydrogen has reached an unallowable condition, and in response the control portion 50 opens the valve 414 -- and thus opening is based on an elapsed time. The duration for which the valve is open can then be determined based on a predetermined time, for example, less than one second. (See the last sentence of the paragraph bridging pages 19 and 20). Accordingly, the assertion that the Species 1a and 2a are mutually exclusive is erroneous.

Further, the mutually exclusive assertion is erroneous as to Species 3a in which the opening of the valve is provided such that a concentration of hydrogen is reduced. This feature is also not mutually exclusive with respect to the other species. For example, the first full paragraph of page 19 indicates that the opening and closing of the valve 414 is so as to control the concentration or dilution of the hydrogen, and moreover, the second full

paragraph of page 19 indicates that the methods described thereafter are provided in order to reduce the hydrogen concentration and avoid ignition. Further, with respect to Species 4a repeated open and closing, this method is also utilized for controlling the concentration or dilution of hydrogen (Species 3a), and also for controlling a mixing amount of hydrogen-off gas and oxygen-off gas (Species 5a). Also, by way of example, in describing the repeated opening and closing (for example, in the paragraph bridging pages 23 and 24 of the present specification), this is one of the methods which is identified at page 19 as being utilized for controlling the concentration or dilution amount of the hydrogen when mixed in the mixing portion. Further, the last two sentences of the paragraph bridging pages 23 and 24 specifically describe this repeated opening and closing as providing a mixed gases discharged at a sufficiently low hydrogen concentration to more reliably avoid ignition. The fact that these species are not mutually exclusive, is also apparent from the fact that, for example, claim 62 relating to the repeated opening and closing depends from claim 58, reciting reducing of the concentration of hydrogen.

It is respectfully submitted that the features identified in the Office Action are different features of the present invention, and although Applicants gratefully appreciate the acknowledgement that such features are not obvious variations, it is respectfully submitted that the assertion that Species 1a-5a are each mutually exclusive with respect to each other is erroneous, and moreover, the assertion that the Species 1b-3b are mutually exclusive with respect to each other is also erroneous. Accordingly, the election of species requirement is traversed on this basis.

The Election of Species requirement is additionally traversed in that the Office Action fails to establish a proper basis for requiring election. Specifically, the Office Action merely provides conclusory statements that there would be a serious or undue burden, but fails to

provide any support. Moreover, the Office Action cites issues as allegedly constituting a burden which are not recognized or available for establishing a burden as set forth in MPEP 808.02, see also MPEP 808.01(a), which confirms that 808.02 is applicable to species elections. For example, the Office Action asserts that the different species “are likely to raise different non-prior art issues under 35 USC §101 and/or 35 USC §112 first paragraph.” First, the Office Action fails to establish how such issues are “likely.” Moreover, such assertions are possible whenever there are different claims or different features set forth in different claims, but the possibility that such issues might arise by the presentation of different claims or different claimed features is not proper basis for asserting a restriction or election of species requirement. Accordingly, it is respectfully submitted that the Office Action fails to establish any serious or undue burden would be required in examining all claims together, and moreover, the assertions of the Office Action are not a proper basis for requiring an election.

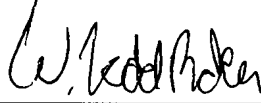
A still further reason for which the election is improper is that this application has already been examined, and the Office Action fails to establish how any serious or undue burden is required based upon the subject matter which has already been searched and examined.

In view of the forgoing, it is respectfully submitted that this application is in condition for examination. Moreover, for these reasons set forth in Applicants’ previous response, it is submitted that this application is in condition for allowance. A Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, he is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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